

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**AMENDED SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8<sup>th</sup> day of March, two thousand twenty-one.

**PRESENT:**

JOSÉ A. CABRANES,  
SUSAN L. CARNEY,  
RICHARD J. SULLIVAN,  
*Circuit Judges.*

---

WENG JIA-TAO,  
*Petitioner,*

v.

ROBERT M. WILKINSON, ACTING  
UNITED STATES ATTORNEY GENERAL,  
*Respondent.*<sup>1</sup>

19-1714  
NAC

**FOR PETITIONER:** John Son Yong, Esq.  
New York, NY.

**FOR RESPONDENT:** Joseph H. Hunt, Assistant Attorney  
General; Anthony C. Payne,  
Assistant Director; Joseph D.  
Hardy, Trial Attorney, Office of

---

<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting Attorney General Robert M. Wilkinson is automatically substituted for former Acting Attorney General Jeffrey A. Rosen as Respondent.

1 Immigration Litigation, United  
2 States Department of Justice,  
3 Washington, DC.  
4

5 UPON DUE CONSIDERATION of this petition for review of a  
6 Board of Immigration Appeals ("BIA") decision, it is hereby  
7 ORDERED, ADJUDGED, AND DECREED that the petition for review  
8 is DENIED.

9 Petitioner Weng Jia-Tao, a native and citizen of the  
10 People's Republic of China, seeks review of a May 28, 2019  
11 decision of the BIA affirming a January 10, 2018 decision of  
12 an Immigration Judge ("IJ") denying Jia-Tao's application  
13 for asylum, withholding of removal, and relief under the  
14 Convention Against Torture ("CAT"). *In re Weng Jia-Tao*, No.  
15 A206 429 050 (B.I.A. May 28, 2019), *aff'g* No. A206 429 050  
16 (Immig. Ct. N.Y.C. Jan. 10, 2018). We assume the parties'  
17 familiarity with the underlying facts and procedural  
18 history.

19 Under the circumstances, we have reviewed both the IJ's  
20 and the BIA's opinions under the substantial evidence  
21 standard. *See Wangchuck v. DHS*, 448 F.3d 524, 528 (2d Cir.  
22 2006); see 8 U.S.C. § 1252(b)(4)(B); *Hong Fei Gao v.*  
23 *Sessions*, 891 F.3d 67, 76 (2d Cir. 2018). "Considering the  
24 totality of the circumstances, and all relevant factors, a  
25 trier of fact may base a credibility determination on . . .

1 the consistency between the applicant's or witness's written  
2 and oral statements . . . , the internal consistency of each  
3 such statement, [and] the consistency of such statements  
4 with other evidence of record . . . without regard to  
5 whether an inconsistency, inaccuracy, or falsehood goes to  
6 the heart of the applicant's claim." 8 U.S.C.  
7 § 1158(b)(1)(B)(iii). "We defer . . . to an IJ's  
8 credibility determination unless, from the totality of the  
9 circumstances, it is plain that no reasonable fact-finder  
10 could make such an adverse credibility ruling." *Xiu Xia Lin*  
11 *v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); accord *Hong*  
12 *Fei Gao*, 891 F.3d at 76. Substantial evidence supports the  
13 agency's determination that Jia-Tao was not credible as to  
14 his claim that police detained and beat him for practicing  
15 Christianity.

16 The IJ reasonably relied on Jia-Tao's inconsistent  
17 statements about how many times he was arrested. See 8  
18 U.S.C. § —1158(b)(1)(B)(iii). Jia-Tao's statements  
19 throughout the proceedings varied as to whether he was  
20 arrested once or twice. This inconsistency provides  
21 substantial evidence for the adverse credibility  
22 determination because it relates to the sole allegation of  
23 past persecution. See *Xian Tuan Ye v. DHS*, 446 F.3d 289,

1 295 (2d Cir. 2006) (holding that “material inconsistency in  
2 an aspect of . . . [applicant’s] story that served as an  
3 example of the very persecution from which he sought asylum  
4 . . . afforded substantial evidence to support the adverse  
5 credibility finding” (internal quotation marks omitted)).  
6 The agency was not required to credit Jia-Tao’s retractions  
7 of the inconsistent statements as they did not resolve the  
8 inconsistency, which was repeated throughout the  
9 proceedings. See *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d  
10 Cir. 2005) (“A petitioner must do more than offer a  
11 plausible explanation for his inconsistent statements to  
12 secure relief; he must demonstrate that a reasonable fact-  
13 finder would be *compelled* to credit his testimony.”  
14 (internal quotation marks omitted)).

15 The adverse credibility determination is bolstered by a  
16 second inconsistency: his and his wife’s written statements  
17 reflected that they began considering him leaving China  
18 before his arrest, but he testified and confirmed that they  
19 did not discuss him leaving until after his arrest. See  
20 *Likai Gao v. Barr*, 968 F.3d 137, 145 n.8 (2d Cir. 2020)  
21 (“[E]ven a single inconsistency might preclude an alien from  
22 showing that an IJ was compelled to find him credible.  
23 Multiple inconsistencies would so preclude even more

1 forcefully.”). The IJ was justified in rejecting Jia-Tao’s  
2 varied explanations for this inconsistency. See *Majidi*, 430  
3 F.3d at 80. The adverse credibility determination is  
4 dispositive because asylum, withholding of removal, and CAT  
5 relief are based on the same factual predicate. See *Paul v.*  
6 *Gonzales*, 444 F.3d 148, 156–57 (2d Cir. 2006).

7 For the foregoing reasons, the petition for review is  
8 DENIED. All pending motions and applications are DENIED and  
9 stays VACATED.

10 FOR THE COURT:  
11 Catherine O’Hagan Wolfe,  
12 Clerk of Court